

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CURT KASS,)
Plaintiff,) 3:07-CV-00095-LRH-VPC
v.)
MINERAL COUNTY COMMISSIONERS) ORDER
et al.,)
Defendants.)

Five motions are presently before the court: (1) Defendants's Motion to Dismiss (#32¹); (2) Plaintiff's Motion to Correct Error of Motion Filing (#56); (3) Plaintiff's Expedited Motion for Extension of Time Within Which to Reply to Defendants' Reply in Support of Defendants' Reply in Support of Defendants' Motion to Strike Plaintiff's Opposition to Defendants Motion to Dismiss (#59); (4) Plaintiff's Expedited Motion for Extension of Time Within Which to Reply to Defendants' Opposition to Plaintiff's Motion to Correct Error of Motion Filing (#61); and (5) Plaintiff's Expedited Motion for Extension of Time Within Which to Reply to Defendants' Opposition to Plaintiff's Motion to Correct Error of Motion Filing (#62).

I. Facts and Procedural History

Plaintiff Curt Kass brought this action on February 28, 2007. (#2.) On March 9, 2007,

¹Refers to the court's docket

1 Plaintiff filed an amended complaint. (#3.) On May 22, 2007, Defendants filed a motion for a
2 more definite statement (#11), which this court granted in a February 12, 2008, minute order (#28).

3 In that order, the court directed Plaintiff to revise his amended complaint to make it more
4 definite. On March 18, 2008, Plaintiff filed his second amended complaint (#29); and on April 3,
5 2008, Defendants filed the instant motion to dismiss for failure to state a claim upon which relief
6 can be granted (#32).

7 **II. Legal Standard**

8 To survive a motion to dismiss for failure to state a claim, a complaint need only satisfy the
9 Federal Rule of Civil Procedure 8(a) notice pleading standard. *Mendiondo v. Centinela Hosp.*
10 *Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). In considering “a motion to dismiss, all well-
11 pleaded allegations of material fact are taken as true and construed in a light most favorable to the
12 non-moving party.” *Wyler Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir.
13 1998) (citation omitted). However, a court does not necessarily assume the truth of legal
14 conclusions merely because they are cast in the form of factual allegations in a plaintiff’s
15 complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

16 There is a strong presumption against dismissing an action for failure to state a claim. *See*
17 *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted). “The issue is
18 not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence
19 in support of the claims.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other*
20 *grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982). However, a plaintiff’s obligation to
21 provide the grounds of his entitlement to relief requires more than labels, conclusions, and a
22 formulaic recitation of the elements of the cause of action. *Bell Atlantic Corp. v. Twombly*, 127
23 S.Ct. 1955, 1965 (2007). “Factual allegations must be enough to raise a right to relief above the
24 speculative level on the assumption that all the allegations in the complaint are true (even if
25 doubtful in fact).” *Id.* (internal citations omitted). “[P]ro se pleadings are liberally construed,

1 particularly where civil rights claims are involved.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d
 2 696, 699 (9th Cir. 1990).

3 **III. Discussion**

4 In support of their motion to dismiss, Defendants argue that the “[t]he Second Amended
 5 Complaint is a long, complex prose narration that is not only contrary to the Rule 8(a) and this
 6 Court’s instruction, but fails to give the Defendants’ fair notice of what the claim arises from and
 7 the grounds upon which it rests.” (Mot. to Dismiss (#32) at 5.) The court is compelled to agree.

8 While Plaintiff appears to allege violations of his First, Fourth, Fifth, and Fourteenth
 9 Amendment rights, he does not support these allegations in any comprehensible form. His second
 10 amended complaint simply fails to constitute “a short and plain statement” of Plaintiff’s claims
 11 “showing that [he] is entitled to relief” Fed. R. Civ. P. 8(a)(2). Even giving Plaintiff the wide
 12 latitude owed to him as a pro se plaintiff, his complaint does not raise a right to relief above the
 13 speculative level. Defendants’ motion to dismiss is therefore granted without prejudice. The court
 14 urges Plaintiff to seek counsel to assist in the preparation of any third amended complaint.

15 IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss (#32) is GRANTED.

16 IT IS FURTHER ORDERED that Plaintiff’s Motion to Correct Error of Motion Filing
 17 (#56) is DENIED as moot.

18 IT IS FURTHER ORDERED that Plaintiff’s Expedited Motion for Extension of Time
 19 Within Which to Reply to Defendants’ Reply in Support of Defendants’ Reply in Support of
 20 Defendants’ Motion to Strike Plaintiff’s Opposition to Defendants Motion to Dismiss (#59) is
 21 DENIED, as the Local Rules of Civil Practice do not allow a reply to a reply. LR 7-2.

22 IT IS FURTHER ORDERED that Plaintiff’s Expedited Motion for Extension of Time
 23 Within Which to Reply to Defendants’ Opposition to Plaintiff’s Motion to Correct Error of Motion
 24 Filing (#61) is DENIED as moot.

25 IT IS FURTHER ORDERED that Plaintiff’s Expedited Motion for Extension of Time
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1 Within Which to Reply to Defendants' Opposition to Plaintiff's Motion to Correct Error of Motion
2 Filing (#62) is DENIED as moot.

3 IT IS SO ORDERED.

4 DATED this 13th day of January, 2009.



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7 LARRY R. HICKS
8 UNITED STATES DISTRICT JUDGE
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